Supreme Court, U.S.
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No. 95-837

In The

Supreme Court of the United States

October Term, 1995

RANDY JORDAN,

Petitioner,

vs.

HAWKER DAYTON CORPORATION and EAST DAYTON TOOL & DIE CO.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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AMENDED LIST OF ALL PARTIES TO THE PROCEEDING

AND

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

The Respondent, Hawker Dayton Corporation ("Hawker Dayton") adopts by reference the "List of All Parties to the Proceeding," contained in Mr. Jordan's Petition for a Writ of Certiorari, corrected and supplemented as follows.

The correct corporate name of Hawker Dayton is "Hawker Dayton Corporation." The correct trade name is "The Hawker Manufacturing Company." Hawker Dayton has no parent company nor any subsidiary. Hawker Dayton is not publicly traded.

With respect to the East Dayton Tool & Die Company, Dorothy S. Darrow stated by letter dated March 27, 1995, to the Clerk of the United States Court of Appeals for the First Circuit and other interested parties, that "the East Dayton Tool & Die Company is no longer in business, having been officially dissolved by Certificate of Dissolution filed with the Secretary of the State of Ohio on February 6, 1995, a copy of which is enclosed." The Certificate sent by Ms. Darrow is dated February 6, 1995, by the Secretary of State of Ohio, and it certifies to the filing and recording of "DIS MIS [sic] of THE EAST DAYTON TOOL & DIE COMPANY." The record is otherwise silent on the current legal status of The East Dayton Tool & Die Company.

STATEMENT OF THE CASE

Applying Maine law, the United States District Court, District of Maine (the "District Court"), ruled by summary judgment that Hawker Dayton is not liable as a successor corporation for the torts of East Dayton. The United States Court of Appeals for the First Circuit (the "First Circuit") affirmed in an undivided opinion. *See Jordan v. Hawker Dayton Corp.*, 62 F.3d 29 (1st Cir. 1995).

The relevant and undisputed facts are as follows.

In the spring of 1973, East Dayton Tool & Die Company ("East Dayton") was operating in part under the trade name "The Hawker Manufacturing Company." Under that trade name, it manufactured a dowel machine purchased by, and delivered to, Banton Brothers Inc., in Newport, Maine.

In August of 1973, East Dayton sold to Harmon Darrow for $1,000 a one-year option to purchase certain items of personal property (the "Assets") for their net book value.

The Respondent, Hawker Dayton Corporation ("Hawker Dayton"), was incorporated in Ohio in March of 1974. Harmon Darrow then assigned his one-year option to purchase the Assets to Hawker Dayton.

In July of 1974, Hawker Dayton exercised its option and purchased the Assets from East Dayton for $150,000. At about that time, East Dayton also transferred to Hawker Dayton the use of the trade name "The Hawker Manufacturing Company."

For approximately two years thereafter, East Dayton

continued to manufacture and sell woodworking machines (including, at first, dowel machines), injection molding, automobile dies, and other specialized machinery.

With the Assets it purchased, Hawker Dayton began manufacturing dowel machines. Approximately one-third of the employees of Hawker Dayton were former employees of East Dayton. Most of the employees who manufactured dowel machines for East Dayton did *not* go to work for Hawker Dayton. Hawker Dayton did not manufacture dowel machines by the same processes as East Dayton. No stockholder of Hawker Dayton has ever been a shareholder of East Dayton.

In 1976, East Dayton defaulted on an installment note to a former shareholder named Dorothy Darrow. At Ms. Darrow's request, a new board of directors was elected. East Dayton then sold manufacturing equipment and real property to third parties for a total of $1,575,000. East Dayton resumed payments on its installment note to Ms. Darrow and made payments to her through 1986.

In 1991, the Petitioner, Randy Jordan, severely injured his hand at work in Maine while working on the dowel machine that Banton Brothers Inc. purchased from East Dayton in 1973.

In 1993, Mr. Jordan filed suit against "The Hawker-Dayton Manufacturing Company." Through discovery, Mr. Jordan learned the correct identities of East Dayton and Hawker Dayton, and that East Dayton had manufactured the dowel machine. Mr. Jordan amended his Complaint to add East Dayton as a defendant. The Amended Complaint alleges that (1) East Dayton negligently manufactured the dowel machine, (2) East Dayton is strictly liable to Mr. Jordan because the dowel machine as sold was defective or unreasonably dangerous, and (3) Hawker Dayton is liable as a successor corporation for the torts of East Dayton.

The District Court ruled by summary judgment that Hawker Dayton is not liable under Maine law as a successor corporation for the torts of East Dayton. The District Court entered judgment by default against East Dayton in the amount of $2,230,088.21. Mr. Jordan appealed the summary judgment in favor of Hawker Dayton. The First Circuit affirmed.

REASONS FOR DENYING THE WRIT

This is a diversity jurisdiction case applying Maine's common-law of successor corporate liability in the context of strict products liability and negligence claims. No issue of federal law is at stake, much less any conflict among the Circuits of the United States Court of Appeals. Indeed, the only conflict alluded to by Mr. Jordan in his petition is a supposed conflict between the First Circuit's holding in this case and its holding in *Cyr v. B. Offen & Co.*, 501 F.2d 1145 (1st Cir. 1974). *Cyr*, however, applied New Hampshire law, and was itself later repudiated by the New Hampshire Supreme Court in *Simoneau v. South Bend Lathe, Inc.*, 130 N.H. 466, 543 A.2d 407, 409 (1988).

Nor is there any unsettled issue of Maine law. The Maine Supreme Judicial Court has stated that the "general" and "established" common law rule is that "absent a contrary agreement by the parties, or an explicit statutory provision in derogation of the established common law rule, a corporation that purchases the assets of another corporation in a *bona fide*, arm's length transaction is not liable for the debts or liabilities of the transferor corporation." *Director of Bureau of Labor Standards v. Diamond Brands, Inc.*, 588 A.2d 734, 736, 737 (Me. 1991).

Mr. Jordan has never argued that Hawker Dayton expressly or impliedly agreed to be liable for the torts of East Dayton. Mr. Jordan has never argued that any statutory provision makes Hawker Dayton liable for the torts of East Dayton. Mr. Jordan has

never argued that Hawker Dayton purchased the Assets in bad faith or other than at arm's length for $150,000. Consequently, the District Court granted Hawker Dayton's motion for summary judgment, and the First Circuit properly affirmed.

Mr. Jordan now petitions this Court, asking it to consider the adoption of a federal common-law rule of successor corporate liability in strict products liability and negligence suits.

Nearly sixty years ago, Justice Brandeis explained in *Erie R.R. v. Tompkins*:

> Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law.

304 U.S. 64, 78 (1938). Since then, this Court has repeatedly cautioned "that federal courts, unlike their state counterparts, are courts of limited jurisdiction that have not been vested with open-ended lawmaking powers." *Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77, 95 (1981). Accordingly, the judiciary may create federal common law only when clearly authorized by statute, or to protect *uniquely* federal interests. *Texas Indus. Inc. v. Radcliff Materials*, 451 U.S. 630, 640 (1981). Neither exception even arguably applies here.

Even were the Court tempted to throw into question sixty years of its settled and fundamental jurisprudence, the Court should be cautioned that in light of the particular facts of this case, Mr. Jordan ultimately seeks the adoption of a federal common-law rule of successor liability *unlike* the rule adopted by any State. As the First Circuit explained:

> Jordan's argument ultimately is that the "product line" doctrine of successor liability should be adopted. . . . It is far from clear the product line doctrine would assist Jordan. This doctrine is at most a minority rule which has plainly not been adopted by Maine.

Jordan, 62 F.3d at 32-33 (citations omitted); *see Flaugher v. Cone Automatic Mach. Co.*, 30 Ohio St. 3d 60, 507 N.E. 2d 331, 337 (1987) ("the 'product line' exception to corporate successor non-liability is a far-reaching and radical departure from traditional principles, such that its adoption is a matter for the legislature rather than the courts").

CONCLUSION

Because no issue of federal law is at stake, the Court should deny Mr. Jordan's petition for a writ of certiorari.

Respectfully submitted,

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